



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0492]

RIN 1625-AA00

Safety Zone; Lower Niagara River at Niagara Falls, New York

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone within the Captain of the Port Zone Buffalo on the Lower Niagara River, Niagara Falls, NY. This rule is intended to restrict vessels from a portion of the Lower Niagara River considered not navigable as listed in the United States Coast Pilot Book 6 – Great Lakes: Lake Ontario, Erie, Huron, Michigan, and Superior and St. Lawrence River and more specifically as described below. The safety zone to be established by this rule is necessary to protect the public and vessels from the hazards associated with the heavy rapids in the narrow waterway of the Lower Niagara River.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0492 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Michael Collet, Chief of Waterways Management, U. S. Coast Guard Sector Buffalo; telephone 716-843-9322, email SectorBuffaloMarineSafety@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On June 21, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Lower Niagara River at Niagara Falls, New York” (81 FR 40226). There we issued the NPRM and invited comments on our proposed regulatory action related to this permanent safety zone. During the 90 day comment period that ended September 19, 2016, we received five comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Coast Guard has already established a permanent safety zone in the Upper Niagara River per 33 CFR 165.902(a) in order to protect the boating public from the dangers of the waters above and at the Niagara Falls. These waters include the United States waters of the Niagara River from the crest of the American and Horseshoe Falls, New York to a line drawn across the Niagara River from the downstream side of the mouth of Gill Creek to the upstream end of the breakwater at the mouth of the Welland River.

The heavy rapids in the section of the Lower Niagara River downstream of Niagara Falls

have not historically been regularly navigated by vessels. In early 2014, the Captain of the Port Zone Buffalo received reports of vessels transiting this section of the Niagara River. These reports prompted further evaluation of the safety of the entire waterway by federal, state, and local agencies. The purpose of the evaluation was to determine what, if any, rescue capability exists that would be able to respond to vessels and/or passengers in distress in the heavy rapids of the river south of the whirlpool rapids to the International Railroad Bridge.

The Captain of the Port Buffalo (COTP) has determined that no feasible rescue capability exists for vessels in distress or persons in the water in the heavy rapids south of the whirlpool rapids to the International Railroad Bridge.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received five comments on our NPRM published June 21, 2016. All five comments were generally supportive of the proposed safety zone with no objections or recommendations. There are no changes in the regulatory text of this rule from the language proposed in the NPRM.

This rule establishes a permanent safety zone to include the following waters: all United States waters of the Lower Niagara River, Niagara Falls, NY from a straight line drawn from position 43° 07'10.70" N, 079°04'02.32" W (NAD 83) and 43° 07'09.41" N, 079°04'05.41" W (NAD 83) just south of the whirlpool rapids from the east side of the river to the international border of the United States, to a straight line drawn from position 43° 06'34.01" N, 079°03'28.04" W (NAD 83) and 43° 06'33.52" N, 079°03'30.42" W (NAD 83) at the International Railroad Bridge. Entry into, transiting, or anchoring within the safety zone is

prohibited unless authorized by the Captain of the Port Zone Buffalo or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and is designed to minimize its impact on navigable waters.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental

jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, most of which are small entities: the owners or operators of vessels intending to transit in the portion of American waters at the whirlpool rapids. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: there have not been a substantial number of small entities attempting to transit this section of the river.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a permanent safety zone in a small section of the Lower Niagara River. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.902, revise the section heading and add paragraph (b) to read as follows:

§ 165.902 Safety Zone; Lower Niagara River at Niagara Falls, New York.

* * * * *

(b) The following is a safety zone – The United States waters of the Lower Niagara River, Niagara Falls, NY from a straight line drawn from position 43° 07'10.70" N, 079°04'02.32" W (NAD 83) and 43° 07'09.41" N, 079°04'05.41" W (NAD 83) just south of the whirlpool rapids from the east side of the river to the international border of the United States, to a straight line drawn from position 43° 06'34.01" N, 079°03'28.04" W (NAD 83) and 43° 06'33.52" N, 079°03'30.42" W (NAD 83) at the International Railroad Bridge.

Dated: April 20, 2017.

J. S. Dufresne,
Captain, U.S. Coast Guard,
Captain of the Port Buffalo.

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